

REMARKS

In the office action, claims 1-23 were provisionally rejected under obviousness-type double patenting in view of co-pending application No. 09/939,410. Applicant is willing to file a Terminal Disclaimer to overcome this objection, if the Examiner otherwise deems the application allowable.

With respect to the 35 U.S.C. §102 and 35 U.S.C. §103 rejections of the claims, Applicants provide the following

The amended claims recited adjusting the encoding/data modulation to increase the channel capacity if a low number of retransmissions occur and lower the channel capacity with if a high number of retransmissions occur. Schramm (U.S. Patent No. 6,208,633) is cited in the office action as disclosing adjusting FEC coding and/or modulation in response to a counted number of erroneous transmitted blocks. However, Schramm only discloses decreasing the channel bit rate when a number of retransmissions exceed a threshold. See column 7, lines 1-37 in particular lines 19-22 and 33-37. The present invention uses the occurrences of retransmissions to also increase the capacity of the channel. This allows for each user to experience similar channel conditions by adjusting the modulation encoding scheme. As a result, the average channel condition for each user is maintained at an even level. The scheme in Schramm essentially keeps trying to retransmit the same block and when retransmissions continually fail that drops the encoding

Applicant: Joseph A. Kwak
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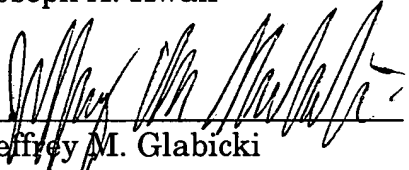
and/or modulation scheme to a lower data rate scheme. Nowhere within Schramm or any of the other prior arts references either alone or in combination, in particular, Haartsen, Agee, Sipola, or Yonge, III et al. disclose the increasing of the channel capacity in view of low retransmission statistics.

For the above reasons, Applicant respectfully submits that all the claims are allowable. If the Examiner does not believe that the claims are in condition for allowance, the Examiner is respectfully request to contact the undersigned. Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

Joseph A. Kwak

By


Jeffrey M. Glabicki
Registration No. 42,584
(215) 568-6400

Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

JMG/mam